

BRAUN LAW GROUP PC  
MICHAEL D. BRAUN, SBN: 167416  
service@braunlawgroup.com  
10680 W. Pico Boulevard, Suite 280  
Los Angeles, CA 90064  
Telephone: (310) 836-6000  
Facsimile: (310) 836-6010

STANLEY LAW GROUP  
MATTHEW J. ZEVIN, SBN: 170736  
mzevin@aol.com  
225 Broadway, Suite 1350  
San Diego, CA 92101  
Telephone: (619) 235-5306  
Facsimile: (815) 377-8419

Attorneys for Plaintiffs  
[Additional Counsel on Signature Page]

**IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ALFREDO M. LOPEZ and LAUREN  
R. GREENE, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

AMERICAN EXPRESS BANK, FSB,  
and AMERICAN EXPRESS  
CENTURION BANK,

Defendants.

Case No. CV09-7335SJO(MANx)

**CLASS ACTION**

**SECOND AMENDED CLASS  
ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

JUDGE: Honorable S. James Otero  
CTRM: 1, Second Floor

1 Plaintiffs, Alfredo M. Lopez and Lauren R. Greene, individually and on  
2 behalf of all others similarly situated, allege as follows:

3 **NATURE OF CASE**

4 1. Plaintiffs Alfredo M. Lopez and Lauren R. Greene are American  
5 Express credit card customers. On behalf of themselves and a proposed class of  
6 similarly situated American Express customers (“the Class”), they seek an  
7 injunction and damages for violations of the Truth in Lending Act (“TILA”), 15  
8 U.S.C. §§ 1601, *et seq.*, for violations of California’s consumer protection statutes,  
9 and for breach of contract, including the implied covenant of good faith and fair  
10 dealing, because American Express has improperly changed and increased their  
11 fixed annual percentage rate of interest to a higher and variable rate – despite the  
12 fact that neither this change nor this increase was contractually agreed to or  
13 disclosed as required by TILA.

14 **JURISDICTION AND VENUE**

15 2. Jurisdiction is conferred on this Court by 15 U.S.C. § 1640(e).

16 3. Venue lies in this District pursuant to 28 U.S.C. § 1391.

17 **PARTIES**

18 4. Plaintiff Alfredo M. Lopez (“Mr. Lopez”) is an individual who resides  
19 in Marina del Rey, California. At all relevant times, he held an American Express  
20 credit card with a fixed APR for purchases that was converted by American Express  
21 to a higher variable rate. Plaintiff Lauren R. Greene (“Ms. Greene”) is an  
22 individual who resides in Marina del Rey, California. At all relevant times, she  
23 held an American Express credit card with a fixed APR for purchases that was  
24 converted by American Express to a higher variable rate. Mr. Lopez and  
25 Ms. Greene are sometimes referred to hereinafter collectively as “Plaintiffs.”

26 5. Defendant American Express Bank, FSB, is a thrift headquartered in  
27 Salt Lake City, Utah. American Express Bank, FSB, does a substantial amount of  
28 business in California.



1 and no annual fee,” American Express promised Mr. Lopez:

2       You’ll enjoy a low introductory 3.9% APR for your first six months  
3       with the Delta Skymiles Options Credit Card. It’s perfect for  
4       transferring balances from other cards that charge higher rates. Then  
5       you’ll continue to enjoy a low fixed APR of just 12.99%.

6 A true and correct copy of the Solicitation Letter is attached hereto as Exhibit A.

7       12. American Express included a document entitled “Disclosure” (the  
8       “Initial Disclosure”) with its Solicitation Letter. The terms in the upper left-hand  
9       corner of the Initial Disclosure mirrored the terms in the Solicitation Letter: under  
10      the heading “Annual Percentage Rate (APR) for Purchases,” American Express  
11      states, “3.9% Introductory rate for purchases during the first six months of Card  
12      membership. Then, a fixed rate of 12.99%.” The figure “12.99%” appears in a font  
13      size at least twice as large as that of any other character on the Initial Disclosure. In  
14      contrast to the fixed 12.99% rate for purchases, the Initial Disclosure states (under  
15      the heading “Variable Rate Information”): “Your APR may vary. The APR for  
16      Cash Advances is determined monthly by adding 14.99% to the Prime Rate.” A  
17      true and correct copy of the Initial Disclosure is attached hereto as Exhibit B.

18      13. Under the heading “Other APRs,” the Initial Disclosure states  
19      “Default APR. Fixed rate of 23.99%. See explanation below.\*” Below, the Initial  
20      Disclosure lists four grounds which will cause the Default Rate to replace the other  
21      stated rates. The Initial Disclosure does not disclose that the purchase rate can be  
22      changed from a fixed rate to a variable rate or that it can be increased for any reason  
23      other than one of the four listed grounds of default.

24      14. On or about October 27, 2003, Mr. Lopez mailed a complete  
25      application for a credit card to American Express. In the application, Mr. Lopez  
26      accepted American Express’ invitation for an additional card to be issued to  
27      Ms. Greene in California. American Express issued cards to Mr. Lopez and  
28      Ms. Greene in California in December, 2003.

1           15. With the cards American Express sent to Mr. Lopez and Ms. Greene,  
2 American Express also sent the Agreement and a “Supplement to the Cardmember  
3 Agreement” (“Supplement”). The Agreement itself does not reference the  
4 introductory 3.9% APR or the 12.99% fixed APR for purchases; rather, the  
5 Agreement states: “Your DPR’s [‘Daily Periodic Rate’] and APR’s for purchases  
6 appear on the accompanying supplement(s).” The first full sentence of the  
7 Agreement states, “This document and the accompanying supplement(s) constitute  
8 your Agreement.” A true and correct copy of the Agreement is attached hereto as  
9 Exhibit C, and a true and correct copy of the Supplement is attached hereto as  
10 Exhibit D.

11           16. The Supplement states: “Current Purchase APR(s): Intro: 3.90% intro  
12 APR (0.0107% DPR) in effect through billing periods ending 05/04. Standard:  
13 12.99% (0.0356% DPR).” Following the information for the purchase APR, the  
14 Supplement states, “Current Cash Advance APR\*: Standard: 18.99% (0.0520%  
15 DPR).” Several lines beneath this statement, the asterisk reference explains, “\*This  
16 is a variable APR, see your Cardmember Agreement for additional details.” Ex. D.  
17 The Agreement states that “The APR for Cash Advances is the Prime Rate plus  
18 14.99%.” Ex. C.

19           17. Thus, the Agreement and the Supplement, consistently with the  
20 Solicitation Letter and Initial Disclosure, obligate American Express to provide  
21 Mr. Lopez and Ms. Greene with a fixed rate APR for purchases of 12.99%  
22 following six months of use of the card (during which time the APR is 3.9%). In  
23 contrast, the Agreement and Supplement, consistently with the Initial Disclosure,  
24 permit American Express to charge Mr. Lopez and Ms. Greene a variable APR for  
25 cash advances, consisting of the prime rate plus 14.99%. *See* Exs. A-D.

26           18. Nowhere in the Agreement, Supplement, Initial Disclosure, or  
27 Solicitation Letter does American Express disclose, let alone clearly and  
28 conspicuously disclose, that the APR for purchases is, or ever could be changed to,

1 a variable rate tied to the prime rate (or any other rate). Rather, American Express  
2 very clearly distinguishes the *fixed* APR for purchases from the *variable* APR for  
3 cash advances. *See* Exs. A-D. Likewise, nowhere in those documents does  
4 American Express ever disclose, let alone clearly and conspicuously disclose, that  
5 the APR for purchases can be increased for reasons other than the listed grounds of  
6 default.

7 19. On or about March 21, 2008, American Express sent Mr. Lopez a  
8 letter acknowledging an incorrect assessment of charges on his account. The  
9 bottom of the letter states, “The issuer of this card is American Express Bank,  
10 FSB.” A true and correct copy of this letter is attached hereto as Exhibit G. Thus,  
11 notwithstanding the fact that American Express Centurion Bank is a party to the  
12 Agreement, both American Express Centurion Bank and American Express Bank,  
13 FSB are named as Defendants in this Complaint and are referred to collectively as  
14 “American Express.”

15 20. On or about August 6, 2009, American Express sent Mr. Lopez a  
16 letter (“Letter”), enclosing a “Notice of Changes to Your Account (“Notice of  
17 Changes”).” In the Letter, American Express states:

18 Like all companies large and small, our pricing has to be responsive to  
19 the business and economic environment. As a result, we have found it  
20 necessary to increase rates and fees on some of our products. Below  
21 are the principal changes to your account:

- 22 • We are changing your Annual Percentage Rate (APR) on  
23 purchases from a fixed rate to a variable rate. This change will  
24 result in an increase to your APR.

25 American Express further explains that the changes apply to existing balances, and  
26 “go into effect for billing periods that begin on or after October 1, 2009.” A true  
27 and correct copy of the Letter is attached hereto as Exhibit E, and a true and correct  
28 copy of the Notice of Changes is attached hereto as Exhibit F.

21. The Notice of Changes states, “[w]e are changing the Standard APR for Purchases from a fixed rate to a variable rate equal to the Prime Rate plus 11.25%. As of August 1, 2009, the Prime Rate plus 11.25% is an APR (Annual Percentage Rate) of 14.50% and a DPR (Daily Periodic Rate) of 0.0397%.” The Notice of Changes also states, “the terms of your account are subject to change in accordance with the American Express Cardmember Agreement (‘Agreement’) governing your Account referenced in or with this notice (including increasing rates and fees, *changing fixed rates to variable rates*, and adding new terms).” (Emphasis added).

22. Contrary to the language of the Notice of Changes, however, nothing in the Agreement, Supplement, Solicitation Letter or Initial Disclosure states that American Express can change a fixed rate to a variable rate. *See* Exs. A-D. Rather, the Agreement, Supplement, Solicitation Letter, and Initial Disclosure all make clear that the APR for purchases is a fixed rate, while the APR for cash advances is a variable rate. *See* Exs. A-D. Further, none of these documents clearly and conspicuously discloses that the fixed rate for purchases can be increased for reasons other than the four stated grounds of default. *See* Exs. A-D.

23. Thus, American Express has changed the fixed purchase APR of Mr. Lopez and Ms. Greene (together with the APRs of all similarly-situated customers in California) to a variable rate, thereby raising it, despite having previously disclosed and committed to a fixed APR for purchases and never having disclosed in a clear and conspicuous manner that the fixed rate for purchases could be changed to a variable rate or could be increased for reasons other than the four stated grounds of default. Buried near the end of the Agreement, following several pages of fine print, American Express included a provision (“Changing this Agreement”) that purports to allow it to “change the terms of or add new terms to this Agreement at any time, in accordance with applicable law.” Ex. C at 3. This provision does not constitute clear and conspicuous notice that American Express



1 could increase the fixed APR for purchases for reasons other than the four stated  
2 grounds of default, or that American Express could change the fixed APR for  
3 purchases to a variable rate.

4 24. Mr. Lopez and Ms. Greene have an existing balance to which  
5 American Express has applied the variable, higher APR. Mr. Lopez and  
6 Ms. Greene could not afford to pay off the entirety of that balance to avoid being  
7 subject to the higher interest charges as a result of American Express having  
8 changed their fixed purchase APR to a variable APR. As of the filing of this First  
9 Amended Complaint, American Express has applied a variable APR of 14.49% to  
10 their existing and new balances for purchases, which is higher than the previously  
11 agreed upon 12.99% fixed rate, thereby causing damages to Mr. Lopez and  
12 Ms. Greene. Upon information and belief, it has done the same and caused  
13 damages to several thousands of other American Express cardmembers.

14 **CLASS ACTION ALLEGATIONS**

15 25. Pursuant to Fed. R. Civ. P. 23, Mr. Lopez and Ms. Greene bring this  
16 action on behalf of themselves and a Class of all other persons similarly situated.

17 The Class consists of:

18 All persons or entities in the United States who: (a) had a consumer or  
19 small-business American Express credit card or charge card account  
20 with American Express Centurion Bank or American Express Bank,  
21 FSB; and (b) had a fixed annual percentage rate for purchases on the  
22 account that was increased or changed to a variable rate at any time  
23 between October 1, 2005 and December 31, 2010; or (c) had a fixed  
24 annual percentage rate for purchases on the account and were provided  
25 notice of an increase in the fixed rate or a change from the fixed rate to  
26 a variable rate at any time between October 1, 2005 and December 31,  
27 2010. Excluded from the Class are American Express; any parent,  
28 subsidiary, or affiliate of American Express or any employees, officers,



1 or directors of American Express; legal representatives, successors, or  
2 assigns of American Express; and any justice, judge or magistrate judge  
3 of the United States who may hear the case, and all persons related to  
4 any such judicial officer, as defined in 28 U.S.C. § 455(b).

5 Plaintiffs reserve the right to modify or amend this proposed definition of the Class  
6 in connection with any motion to certify a class or based on information or  
7 discovery learned during the course of this litigation.

8 26. There are questions of law and fact that are common to all members of  
9 the Class, which questions predominate over any question affecting only individual  
10 Class members. The principal common issues are:

11 a) whether American Express violated TILA through its actions as  
12 described herein;

13 b) whether Plaintiffs and the Class members have a right to  
14 recover actual and/or statutory damages by virtue of American Express' failure to  
15 comply with TILA;

16 c) whether American Express breached its contracts and/or the  
17 implied covenant of good faith and fair dealing;

18 d) whether Plaintiffs and the Class members have a right to  
19 recover damages by virtue of American Express' breaches of the implied covenant  
20 of good faith and fair dealing;

21 e) whether American Express violated California's Business and  
22 Professions Code §§ 17200, *et. seq.*;

23 f) whether Plaintiffs and the Class members have a right to obtain  
24 injunctive relief and/or restitution by virtue of American Express' violations of  
25 California's consumer protection laws;

26 g) whether American Express has included language in its  
27 cardmember agreements that is unconscionable under California law; and

28 h) the nature and extent of any other remedies, including statutory

1 damages, restitution and/or injunctive relief, to which proposed Class members are  
2 entitled as a result of American Express' wrongful conduct.

3 27. The only potential individual questions concern the computation of  
4 damages to be awarded each Class member, which are questions that can be  
5 determined by a ministerial examination of the relevant files. For notice purposes,  
6 Class members can be identified using American Express' computerized databases  
7 of customer records.

8 28. Plaintiffs' claims are typical of the claims of all of the other Class  
9 members, because their claims are based on the same legal and remedial theories as  
10 the claims of the Class and arise from the same course of conduct by American  
11 Express.

12 29. Plaintiffs will fairly and adequately protect the interest of all Class  
13 members in the prosecution of this Action and in the administration of all matters  
14 relating to the claims stated herein. Plaintiffs are similarly situated with, and have  
15 suffered similar injuries as, the members of the Class they seek to represent.  
16 Plaintiffs have retained counsel experienced in handling class action lawsuits  
17 involving United States federal law claims, state consumer law and breach of  
18 contract claims. Neither Plaintiffs nor their counsel have any interest that is  
19 antagonistic to those of the Class or which might cause them not to vigorously  
20 pursue this action.

21 30. A class action is superior to other available methods for the fair and  
22 efficient adjudication of the controversy, in that:

23 a) the losses suffered by the Class members are such that  
24 prosecution of individual actions is impractical or economically unfeasible;

25 b) by contrast, the profits obtained by American Express as a  
26 result of its unlawful practices are substantial;

27 c) in the absence of the class action device, Plaintiffs and the Class  
28 would be left without a remedy for the wrongful acts alleged, and American

Express will be unjustly enriched;

d) the prosecution of separate lawsuits by individual members of the Class would create the risk of inconsistent adjudications with respect to individual Class members, which would establish incompatible standards of conduct for American Express, making concentration of the litigation concerning this matter in this Court desirable;

e) the claims of the representative Plaintiffs are typical of the claims of the Class; and

f) no unusual difficulties are likely to be encountered in the management of this action as a class action.

31. The Class is so numerous as to make it impracticable to join all members as Plaintiffs. Based upon the investigation of counsel, the number of members of the Class is estimated to be in excess of 100,000 persons.

### **FIRST CAUSE OF ACTION**

#### **(Violation of the Truth in Lending Act, 15 U.S.C. Sections 1601 *et seq.*)**

32. Mr. Lopez and Ms. Greene repeat and reallege all paragraphs above as if set forth fully herein.

33. In enacting TILA, Congress found:

that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of [TILA] to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

15 U.S.C. § 1601(a). Thus, the purpose of TILA is to assure meaningful

1 disclosures that accurately reflect the credit terms to which parties are legally  
2 bound.

3 34. Pursuant to TILA, credit card transactions are conducted under “open  
4 end credit plans,” which TILA defines as “a plan under which the creditor  
5 reasonably contemplates repeated transactions, which prescribes the terms of such  
6 transactions, and which provides for a finance charge which may be computed from  
7 time to time on the outstanding unpaid balance.” 15 U.S.C. § 1602(i).

8 35. TILA and Regulation Z require a credit card issuer to clearly,  
9 conspicuously, and accurately disclose in writing the legal obligations of the  
10 parties, including the applicable annual percentage rate. 15 U.S.C. §§ 1637(a)(1),  
11 (a)(3) & (a)(4); 12 C.F.R. §§ 226.5(a), (c) & 226.6(a).

12 36. By failing to clearly and conspicuously disclose in the Solicitation  
13 Letter and Initial Disclosure that it could or would change Plaintiffs’ and the Class’  
14 APRs for purchases from a fixed rate to a variable rate or that the APRs for  
15 purchases could increase for any reason other than the four listed grounds of  
16 default, American Express violated TILA, 15 U.S.C. § 1637(a); and Regulation Z.  
17 12 C.F.R. § 226.5(a)(1).

18 37. By failing to disclose in the Agreement and Supplement that it could  
19 change Plaintiffs’ and the Class’ APRs for purchases from a fixed rate to a variable  
20 rate or that the APRs for purchases could increase for any reason other than the four  
21 listed grounds of default, American Express violated TILA and Regulation Z.  
22 TILA 15 U.S.C. § 1637(a); 12 C.F.R. §§ 226.5(a), (c) & 226.6(a). Alternatively,  
23 given the complete lack of reference or relation of the purported “Changing this  
24 Agreement” provision of the Agreement to the provisions of the Agreement and the  
25 Supplement disclosing a fixed rate for purchases, and by essentially hiding the  
26 “Changing this Agreement” provision in fine print, American Express failed to  
27 disclose clearly and conspicuously in the Agreement that it could change Plaintiffs’  
28 and Class’ APRs for purchases from a fixed rate to a variable rate and it thereby

1 violated TILA and Regulation Z. *Barrer v. Chase Bank USA, N.A.*, 566 F.3d 883,  
2 891-92 (9th Cir. 2009). Additionally, given the complete lack of reference or  
3 relation of the purported “Changing this Agreement” provision of the Agreement to  
4 the provisions of the Agreement and the Supplement disclosing a fixed rate for  
5 purchases, and the fact that those provisions provide four grounds for default as the  
6 only basis for increasing the fixed rate, and by essentially hiding the “Changing this  
7 Agreement” provision in fine print, American Express failed to disclose clearly and  
8 conspicuously in the Agreement that it could increase the fixed rate for purchases  
9 for reasons other than the four stated grounds of default, and it thereby violated  
10 TILA and Regulation Z. *Barrer*, 566 F.3d 883, *supra*.

11 38. As a result of American Express’ violations of TILA and Regulation  
12 Z, Plaintiffs and the Class are damaged, and American Express is subject to the full  
13 extent of civil liability prescribed by law. American Express’ failures to disclose  
14 clearly and conspicuously that it unilaterally reserved the right to change Plaintiffs’  
15 and the Class’ APRs for purchases from a fixed rate to a variable rate or that the  
16 APRs for purchases could increase or change from a fixed rate to a variable rate for  
17 any reason other than the four listed events of default are material omissions giving  
18 rise to a presumption of reliance on the part of Plaintiffs and the Class that  
19 proximately caused damages to Plaintiffs and the Class. Plaintiffs and the Class are  
20 accordingly entitled to all actual and statutory damages pursuant to 15 U.S.C.  
21 § 1640(a), and to injunctive relief.

## 22 **SECOND CAUSE OF ACTION**

### 23 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

24 39. Mr. Lopez and Ms. Greene repeat and reallege all paragraphs above as  
25 if set full forth herein.

26 40. The Agreements between Plaintiffs and the other members of the  
27 Class and American Express provide for loans at fixed annual percentage rates.  
28 Specifically, the Agreement and the Supplement, consistent with the Solicitation

1 Letter and Initial Disclosure, obligated American Express to provide Plaintiffs and  
2 the other members of the Class with a 12.99% fixed rate APR for purchases  
3 (following the initial six month offer of 3.9%).

4 41. APR is a fundamental term of the use of credit and is critical to a  
5 consumer's ability to repay debt in a responsible and timely manner. A fixed APR  
6 was the central focus of American Express' Solicitation Letter and became a central  
7 term in the Agreement and the Supplement between Plaintiffs and the other  
8 members of the Class and American Express.

9 42. A covenant of good faith and fair dealing is implied in every contract,  
10 including those governing the use of credit between Plaintiffs and the Class and  
11 American Express. In particular, American Express' reservation of the unilateral  
12 and unrestricted right to modify the Agreement in its sole and unfettered discretion  
13 in the "Changing this Agreement" provision is subject to the covenant of good faith  
14 and fair dealing.

15 43. Under the covenant of good faith and fair dealing, both parties to a  
16 contract impliedly promise not to intentionally do anything to injure the other  
17 party's right to receive the benefits of the contract.

18 44. Plaintiffs and members of the Class expressly bargained for credit for  
19 purchases at fixed APRs. The subsequent unilateral modifications of the purchase  
20 APRs from fixed to variable rates represents a fundamental change to the most  
21 material term of the Agreements and is clearly beyond the reasonable expectations  
22 of the parties. That it was unilaterally imposed by the party with superior  
23 bargaining power and resulted in an effectively higher APR solely to the detriment  
24 of Plaintiffs and the Class makes the conduct even more unreasonable by any  
25 objective standard.

26 45. By changing the purchase APRs from a fixed to a higher variable rate,  
27 American Express denied Plaintiffs and members of the Class of the benefits of  
28 their bargain.

1        46. Plaintiffs and members of the Class incurred damages and were  
2 injured as a result of paying additional interest on their loans due to American  
3 Express' unilateral modification of their APRs from fixed to variable rates.

4                                    **THIRD CAUSE OF ACTION**

5        **(Violation of the "Unfair" Prong of California's Unfair Competition Law,**  
6        **California Business & Professions Code Sections 17200, et. seq.)**

7        47. Mr. Lopez and Ms. Greene repeat and reallege all paragraphs above as  
8 if set full forth herein.

9        48. California's Unfair Competition Law ("UCL") defines unfair business  
10 competition to include any "unlawful, unfair or fraudulent" act or practice.

11        49. A business act or practice is "unfair" under the UCL if it offends a  
12 legislatively declared policy, or if the reasons, justifications and motives of the  
13 alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

14        50. American Express has violated the "unfair" prong of the UCL by  
15 unilaterally changing and raising the APR of Plaintiffs and the Class from a fixed  
16 12.99% rate to a 14.49% (or any other higher) variable rate. By failing to clearly  
17 and specifically disclose the potential for such a change in its Solicitation Letter,  
18 Initial Disclosure, Agreement and/or Supplement, and by acting in a manner that is  
19 contrary to and inconsistent with its prior disclosures, American Express Congress'  
20 legislatively declared policy of enabling and providing consumers with the  
21 informed use of credit. It, thereby, acted unfairly to Plaintiffs and the Class.

22        51. Plaintiffs and the Class relied on American' Express' promise to  
23 extend credit pursuant to a fixed APR by using their credit cards and establishing a  
24 credit balance on their cards. Plaintiff and the Class have and will continue to  
25 suffer extreme financial harm as a result of American Express' unilateral decision  
26 to subject their existing and future credit balances to a higher, variable APR. In  
27 short, unilaterally modifying the terms of credit after debt has been incurred is  
28 contrary to the reasonable expectations of Plaintiffs and the Class and constitutes



1 offensive, oppressive, unscrupulous, unconscionable, harmful and unfair conduct  
2 with the meaning of the UCL. American Express' only conceivable motive, reason  
3 or justification for changing the APR was to increase its revenues and profits at the  
4 expense of Plaintiffs and the Class. Accordingly, American Express' reasons,  
5 justifications and motive for changing and increasing the APR applicable to  
6 Plaintiff and the Class is far outweighed by the extreme gravity of the harm caused  
7 to Plaintiff and the Class.

8         52. American Express also engaged in unfair conduct by unilaterally  
9 inserting in its Agreement two unconscionable provisions. First, it inserted an  
10 arbitration provision that includes a class action waiver, which is contrary to a  
11 fundamental California right, contrary to California public policy and so unfairly  
12 one-sided that it is substantively unconscionable. Second, it inserted a generic  
13 clause that arguably purports to reserve for itself the sole right to change any term  
14 of its Agreement at any time and for any reason, "in accordance with applicable  
15 law" and effectively buried that provision in the back of its lengthy Agreement,  
16 which is also contrary to a fundamental California right, contrary to California  
17 public policy and so unfairly one-sided that it is substantively unconscionable.  
18 Since American Express had superior bargaining power and unilaterally inserted  
19 each of these provisions into a standard form contract which was offered on a take-  
20 it or leave-it basis, its insertion of these clauses into its cardmember Agreements  
21 was procedurally unconscionable.

22         53. By engaging in the acts and practices alleged herein, American  
23 Express has engaged, and continues to engage, in unfair business practices within  
24 the meaning of the UCL.

25         54. Through its unfair acts and practices, American Express has obtained,  
26 and continues to unfairly obtain, money from Plaintiffs and the Class in the form of  
27 excess finance charges. As such, Plaintiffs request that this Court cause American  
28 Express to restore this money to Plaintiffs and all Class members and to enjoin

American Express from continuing to engage in its unfair conduct as discussed herein. Otherwise, Plaintiffs and the Class will be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs, Alfredo M. Lopez and Lauren R. Greene, on behalf of themselves and the Class, request the following relief:

A. An order certifying that this action is properly brought and may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, that Plaintiffs be appointed as Class Representatives, and that Plaintiffs' counsel be appointed Class Counsel;

B. Actual and statutory damages pursuant to 15 U.S.C. § 1640;

C. Damages for breach of the implied covenant of good faith and fair dealing;

D. Restitution and injunctive relief for violating the UCL;

E. An award of reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 1640; and

F. Such other relief at law or equity as this court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiffs demand a jury trial for all claims so triable.

DATED: August 20, 2014

STANLEY LAW GROUP  
MATTHEW J. ZEVIN

/s/ Matthew J. Zevin  
MATTHEW J. ZEVIN

225 Broadway, Suite 1350  
San Diego, CA 92101  
Telephone: (619) 235-5306  
Facsimile: (815) 377-8419

1 BRAUN LAW GROUP PC  
2 MICHAEL D. BRAUN  
3 10680 W. Pico Boulevard, Suite 280  
4 Los Angeles, CA 90064  
5 Telephone: (310) 836-6000  
6 Facsimile: (310) 836-6010

7 STANLEY LAW GROUP  
8 MARC R. STANLEY  
9 (admitted *pro hac vice*)  
10 mstanley@stanleylawgroup.com  
11 MARTIN WOODWARD  
12 (admitted *pro hac vice*)  
13 mwoodward@stanleylawgroup.com  
14 3100 Monticello Avenue, Suite 750  
15 Dallas, TX 75205  
16 Telephone: (214) 443-4300  
17 Fax: (214) 443-0358

18 LAW OFFICE OF ANDREW KIERSTEAD  
19 ANDREW S. KIERSTEAD; SBN: 132105  
20 ajkier@aol.com  
21 1001 SW 5th Avenue, Suite 1100  
22 Portland, OR 97204  
23 Telephone: (508) 224-6246  
24 Facsimile: (508) 224-4356

25 LAW OFFICES OF PETER N. WASYLYK  
26 PETER N. WASYLYK  
27 (*pro hac vice* pending)  
28 pnwlaw@aol.com  
1307 Chalkstone Avenue  
Providence, RI 02908  
Telephone: (401) 831-7730  
Facsimile: (401) 861-6064

LAW OFFICE OF JOHN KOENIG  
JOHN KOENIG, SBN: 132104  
johnkoeniglaw@roadrunner.com  
274 S Westgate Avenue  
Los Angeles, CA 90049  
Telephone: (310) 472-2124

Attorneys for Plaintiffs

**PROOF OF SERVICE**

*Alfredo M. Lopez, et al. v. American Express Bank, FSB, et al.*  
CASE NO.: CV09-7335SJO(MANx)

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action. I am employed in the County of San Diego, State of California. My business address is: 225 Broadway, Suite 1350, San Diego, CA 92101.

That on August 20, 2014, I served the following document(s) entitled: **SECOND AMENDED CLASS ACTION COMPLAINT** on ALL INTERESTED PARTIES in this action:

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence, pleadings, and other matters for mailing with the United States Postal Service. The correspondence, pleadings and other matters are deposited with the United States Postal Service with postage thereon fully prepaid in San Diego, California, on the same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY CM/ECF Electronic Service:** I caused such document to be served via the Court's (NEF) electronic filing system on all registered parties.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 20, 2014, at San Diego, California.

/s/ Matthew J. Zevin  
MATTHEW J. ZEVIN